

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/581,951	Applicant(s) SCHILLING ET AL.
Examiner DANIEL S. LARKIN	Art Unit 2856

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 April 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Daniel S. Larkin/
Primary Examiner, Art Unit 2856

Continuation of 11, does NOT place the application in condition for allowance because: the arguments presented are not deemed to be persuasive.

With respect to Applicants' argument that Cronin and Abdel-Rehim teach syringes having nothing in common; thus their combination would not be obvious is respectfully false. First, both syringes are devices for extracting material/substances from a sample. Thus, the two devices do have something in common. Additionally, one of the embodiments disclosed within Abdel-Rehim disclose coating a filter with the solid phase material, page 4, lines 4-5. Secondly, the examiner has previously discussed the general teachings of reference US 2001/0032521 (Pawliszyn), which discloses that SPME may be used to extract gaseous fractions from a sample, para 40-41. Pawliszyn also discloses that SPME may be used as a "filter" to sample airborne particulate matter, para 43-44. Thus, it would also appear that Abdel-Rehim could perform the functions of Cronin. Cronin was cited to teach a positional relationship between the extraction means and the syringe and not to replace the type of extraction media used within the syringe device. Given that one of ordinary skill in the art would and should be aware of the many uses of SPME material to sample gas fractions, as well as particulate material, the examiner argues that one of ordinary skill in the art would recognize the many types of means available to release the fractions from the extraction material.

With respect to Applicants' argument that the material of Abdel-Rehim would always require a solvent to transfer the solute as compared to the invention, the examiner respectfully disagrees. First, claims 1 and 2 as currently presented make no reference to thermal desorption as argued by the Applicants. Furthermore, the claims also do not preclude the use of a solvent to transfer the extracted material from the stationary phase. The general teachings of Pawliszyn also teach using desorption combined with the use of a carrier gas, which appears to be very similar to Applicants use of heat and a carrier gas to extract samples from the stationary material, page 4, lines 12-16.

With respect to Applicants' argument regarding sampling efficiency, the examiner is unconvinced. Applicants freely acknowledge, page 5, line 4-6, that the SPME fibers are capable of sampling gaseous solutes; but then recites dimensions of packing materials, which are not claimed, to be used with Applicants' device. Thus, what is claimed is any stationary material and not the specific material argued having a specific surface size.